

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Local No. 20 Teamsters Union Insurance  
Health and Welfare Plan and Trust,

Case No. 3:09 CV 1130

Plaintiff,

MEMORANDUM OPINION  
AND ORDER

-vs-

JUDGE JACK ZOUHARY

City of Toledo,

Defendant.

Plaintiff, an employee benefit plan (Plan) as defined by ERISA, 29 U.S.C. § 1002(3), seeks to recover unpaid Plan contributions related to the removal and reinstatement of one of Defendant's employees, John Fischbach.

This Court previously granted, in part, Plaintiff's Motion for Summary Judgment (Doc. No. 15) "to the extent it argues that Plaintiff is not required to arbitrate its claim." (Doc. No. 18). (This Court also denied Defendant's Motion for Summary Judgment (Doc. No. 14) which argued that arbitration was mandatory and that this Court had no jurisdiction.) The remainder of Plaintiff's Motion, dealing with the merits, was denied without prejudice, allowing the Motion to be renewed following settlement negotiations. Plaintiff now requests that this Court reopen and rule on the Motion (Doc. No. 23).

This Court held a telephone conference with counsel for both parties on April 5, 2010, where, given the prior ruling on arbitration, defense counsel indicated no opposition to Plaintiff's Motion on the merits -- liability and damages. There is no dispute the City did not pay contributions to the Plan on behalf of Fischbach, or the amount owing.

This Court finds there are no undisputed material facts (Joint Stipulation, Doc. No. 13) and that Plaintiff is entitled to recover for delinquent benefit contributions, as well as liquidated damages for the unpaid months of July 7, 2006 to June 2, 2008. Section 502(g) of ERISA gives the Plan the right to collect liquidated damages "in an amount not in excess of twenty percent (20%)" of the unpaid contribution. 29 U.S.C. § 1132(g). Plaintiff's calculations for the unpaid contributions and the liquidated damages are uncontested. *See Kile Affidavit* (Doc. No. 15-1).

Therefore, this Court grants Plaintiff's Motion, and enters judgment in favor of Plaintiff for Thirty Thousand Seventy-Three Dollars and Ninety-Three Cents (\$30,073.93) for unpaid contributions; and Six Thousand Fourteen Dollars and Seventy-Nine Cents (\$6,014.79) for liquidated damages. Plaintiff has ten (10) days from the date of this Order to file an Affidavit for Attorney Fees.

IT IS SO ORDERED.

s/ Jack Zouhary  
JACK ZOUHARY  
U. S. DISTRICT JUDGE

April 7, 2010